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9 Chapter 7 Trustee

10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**
12 **SACRAMENTO DIVISION**

13 In re:

14 **ERNESTO DIAZ,**
15 Debtor.

Case No. 07-28426-C-7
Chapter 7

DCN: DNL-21

Date: December 14, 2010
Time: 9:30 a.m.
Place: Dept. C, Courtroom 35
501 I Street, 6th Floor
Sacramento, CA. 95814

17 **MOTION TO APPROVE SALE OF 2.24 ACRES OF VACANT LAND**

18 RICHARD J. HANF ("Trustee") hereby moves for authority to sell the real property
19 consisting of approximately 2.24 acres of vacant land located on Benicia Road, Vallejo, Solano
20 County AP# 0071-250-150, California ("2.24 acres"), to Harish Joshi ("Buyer") for \$150,000,
21 subject to bankruptcy court approval and over-bidding at the hearing on this motion. The sale will
22 be free and clear of the following liens, encumbrances, and claims of interest pursuant to 11 U.S.C.
23 Section 363(f)(3), listed as exemptions in the preliminary title report:

Item(s) #	Claimant	Description
6 & 7	Internal Revenue Service	Pre-petition tax lien paid down post-petition to the approximate sum of \$240,000.00 through November, 2010, including interest and penalties. As with prior asset sales in this case, Trustee will obtain claimant consent by approval of the form of the order granting this motion.

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|----|-----|---|---|
| 1 | 8 | Foley, McIntosh, Frey & Claytor | Pre-petition abstract of judgment paid down pre- |
| 2 | | | petition to \$13,608.45 through May 29, 2009, |
| 3 | | | including post-petition interest. The claim is the |
| 4 | | | subject of a bonafide dispute in Adversary Proceeding |
| | | | No. 09-02522, in which Trustee seeks relief under 11 |
| | | | U.S.C. Sections 547 and 502(d). |
| 5 | 9. | State of California,
Franchise Tax Board | Post-petition tax lien recorded on February 17, 2010 |
| 6 | | | in the amount of \$31,393.74. |
| 7 | 10. | Mercury Insurance Company | Post-petition lien recorded on June 4, 2010 in the |
| 8 | | | amount of \$10,456.50 on account of a judgment |
| | | | entered in favor of Mercury Insurance on December |
| | | | 15, 2004 and renewed on September 22, 2009. |
| 9 | 11. | Solano County Dept. Of | Post-petition lien recorded on July 6, 2010, on |
| 10 | | Child Support Services | account of a court order for installment payments. |

11 Trustee will also apply for allowance to Ethos Real Estate of a 10% commission as a Chapter
12 7 administrative expense and authorizing Trustee to pay same from escrow, along with the
13 undisputed real property taxes estimated to be about \$22,777.95. In support thereof, Trustee
14 respectfully represents that:

15 1. This case was commenced by the filing of a voluntary Chapter 11 petition on
16 October 10, 2007 by the debtor and converted to Chapter 7 for cause on October 14, 2008.

17 2. On August 12, 2008, Trustee was appointed as trustee for the above-captioned
18 bankruptcy estate.

19 3. Among the assets of the estate is 2.24 acres, subject to the claims of lien described
20 above.

21 4. On August 12, 2009, the bankruptcy court granted RJH-17, Trustee's application for
22 authority to employ Ethos Real Estate, a real estate broker whose employment by the debtor had
23 been approved in February 2008, to list and sell the 2.24 acres for a commission of 10% of the
24 gross sale price.

25 5. Trustee and Buyer, by and through the efforts of Ethos Real Estate, have entered into
26 a purchase and sale agreement, including 2 addenda, the terms of which includes: (a) Buyer shall
27 accept the 2.24 acres in "as-is" condition; (b) Buyer has tendered a \$25,000 deposit non-
28 refundable in all events except if Buyers are overbid; (c) Buyer shall pay an additional \$125,000

1 at close of escrow; (d) Trustee shall pay title, escrow and county transfer tax and all liens against
2 the 2.24 acres. Those terms are the product of extended negotiations between Trustee and Buyer.

3 6. Approving the sale is in the best interests of the estate because the 2.24 acres has
4 been exposed to the market for nearly 2 years with the assistance of a real estate professional,

5 WHEREFORE, Trustee prays for an order: (a) approving the sale pursuant to the terms of
6 the purchase and sale agreement, and free and clear of the liens, encumbrances, and claims of
7 interest of Internal Revenue Service and Foley, McIntosh, Frey & Claytor; (b) allowing Ethos
8 Real Estate a 10% commission as a Chapter 7 administrative expense and authorizing Trustee to
9 pay same from escrow, along with the undisputed real property taxes; (c) authorizing Trustee to
10 take all steps necessary to complete the transaction; and (d) such other and further relief as is
11 necessary and proper.

12
13 DATED: November 11, 2010

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

14
15 By: 

16 **J. RUSSELL CUNNINGHAM**
17 Attorney for Richard J. Hanf
18 Chapter 7 Trustee
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